

## **REMARKS**

In view of the foregoing amendments and following remarks responsive to the Final Office Action of July 12, 2005, Applicant respectfully requests favorable reconsideration of this Application.

The Examiner rejected claims 5 and 14 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,201,829 to Schneider in view of U.S. Patent No. 6,738,935 to Kimmitt. The Examiner also rejected claim 15 under 35 U.S.C. § 112 because it referenced a canceled claim and thus lacked antecedent basis. In addition, the Examiner objected to claims 3–4 and 7–13 as being dependent upon a rejected base claim but indicated that these claims would be allowable if rewritten in independent form to include all of the limitations of the base claims and any intervening claims. The Applicant thanks the Examiner for this indication of allowability.

By the present amendment, the Applicant has canceled the rejected claims 5 and 14. The rejection of these claims is thus moot. In addition, the Applicant has amended claim 15 to replace the limitation “as recited in claim 1” with “as recited in claim 3,” in order to provide proper antecedent basis. In view of these amendments, the application is now in condition for allowance.

Finally, Applicant respectfully submits that the finality of the outstanding Office Action is premature and should be withdrawn because of the new rejection of claims 5 and 14 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,201,829 to Schneider in view of U.S. Patent No. 6,738,935 to Kimmitt. The MPEP provides that a second or subsequent action “shall be final, *except where the examiner introduces a new ground of rejection that is neither necessitated by applicant’s amendment of the*

*claims nor based on information submitted in an information disclosure statement . . . .”*

MPEP § 706.07(a).

In the present case, in the first office action dated September 22, 2004, the Examiner rejected only claims 1, 2 and 6 and merely objected to claims 3–5 and 7–15 as being dependent upon rejected claims. Accordingly, in the response dated January 24, 2005, Applicant canceled claims 1, 2 and 6, placing the application in condition for allowance. In the second (outstanding) office action, dated July 12, 2005, however, the Examiner introduced a new ground of rejection, namely a section 103 rejection of claims 5 and 14, which were not previously rejected. In making this new rejection, the Examiner relied solely on previously cited art and did not rely on the art newly cited in the Information Disclosure Statement filed on January 24, 2005.

The new rejection of claims 5 and 14 was not necessitated by Applicant's previous amendment. The amendment to claims 5 and 14 in Applicant's response dated January 24, 2005 merely incorporated the limitations already recited in claims 1 and 6, from which claims 5 and 14 respectively depended. The previous amendment did not add any new limitations to claims 5 or 14 that would have necessitated the present rejection under section 103. Accordingly, MPEP § 706.07(a) provides that the outstanding office action should not be final, and thus the finality is premature and should be withdrawn.

Based on the foregoing, Applicant respectfully requests the Examiner to withdraw the finality of the office action dated July 12, 2005 and/or to issue a Notice of Allowance at the earliest date. The Examiner is invited to contact Applicant's

undersigned counsel by telephone call in order to further the prosecution of this case in any way.

Respectfully submitted,

1/12/05  
Dated

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RESPONSE TO 2005-07-12 OA